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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,332	02/19/2002	Kuniyoshi Mishima	8001-1011	1360
466	7590	09/30/2004	EXAMINER	
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			DUNCAN, MARC M	
			ART UNIT	PAPER NUMBER
			2113	

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/076,332

Applicant(s)

MISHIMA, KUNIYOSHI

Examiner

Marc M Duncan

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2002 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Status of the Claims***

Claims 1, 4 and 7 are rejected under 35 USC 102(b) as being anticipated by Foster.

Claims 2, 3, 5, 6, 8 and 9 are rejected under 35 USC 112, first paragraph.

Claims 7, 8 and 9 are rejected under 35 USC 101 for containing non-statutory subject matter.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2, 3, 5, 6, 8 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 2, 5 and 8 contain the limitation "wherein said CPU operation time obtaining means obtains, at a regular interval, an operation time of the CPU during the time interval." The only time interval contained in the claim is the time interval between obtaining a first execution address and obtaining a next execution address. Applicant's claim, therefore, states that the CPU operation is obtained at regular intervals between the time that two consecutive execution addresses are obtained. This is clearly not enabled by applicant's specification. With reference to applicant's Figure 8, it can be

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seen that a first execution address is obtained at step S1. A second execution address is obtained at step S2, with a time interval of  $m$  elapsing between the acts of obtaining the first and second addresses. It can also clearly be seen that a first CPU operation time is obtained at T1 and a second time is obtained at T2, with a period of  $4n$  between the acts of obtaining the first and second times. The value of  $4n$  is greater than the value of  $m$ , which shows that the CPU operation time is not obtained at regular intervals during the time interval between the obtaining of the first and second execution addresses. The teachings of claims 2, 5 and 8 are therefore not enabled by the specification. Claims 3, 6 and 9 contain all teachings of claims 2, 5 and 8 respectively and as a result suffer from the same deficiencies.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 7 states "A program implemented by electrical signals." Such claim language does not represent statutory subject matter under 35 USC 101. A program product, as the examiner believes is the intended subject matter of applicant's claim 7, must contain computer executable instructions embedded on a computer readable medium, said computer executable instructions being executed by a computing device.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Foster.

Regarding claims 1, 4 and 7:

Foster teaches CPU operation status obtaining means for obtaining, at a regular interval, an execution address at which a CPU is performing execution and for checking and recording a program identifier of a program in execution from the obtained execution address on page 315, section 9.2.1, lines 4-5. The value of the program counter is the execution that tells which part of the program is executing (i.e. the program identifier).

Foster teaches CPU operation time obtaining means for obtaining an operation time of the CPU during an operation period on page 315, section 9.2.1, lines 5-7 and page 316, section 9.2.2, lines 10-13.

Foster teaches operation report creation means for obtaining a total number of program identifiers, recorded by said CPU operation status obtaining means, for a predetermined period for each program identifier or each group of a plurality of predetermined program identifiers and for outputting a value, obtained by multiplying a ratio of the total number of program identifiers for each program identifier or each group of the plurality of predetermined program identifiers to a total number of program

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identifiers recorded by said CPU operation status obtaining means for the predetermined period and the CPU operation time obtained by said CPU operation time obtaining means, as a CPU operation time required for execution of a program corresponding to the program identifier or of a program group corresponding to the plurality of predetermined program identifiers on page 315, section 9.2.1, lines 4-7, page 316, section 9.2.2, lines 10-13 and page 319, section 9.3.1, lines 1-3. Foster states that the execution frequency is obtained for a value of the program counter (i.e. a program identifier). The execution frequency is equivalent to a ratio of how often one program identifier appears out of a total group of program identifiers. The execution frequency is then used to estimate the amount of time spent in a part of a program (i.e. the amount of operation time for a specific program identifier). It is therefore necessary that the execution frequency be multiplied by the operation time in order to obtain such an estimation.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art not relied upon contains elements of the instant claims and/or represents a current state of the art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc M Duncan whose current telephone number is 703-305-4622. The examiner's telephone number as of October 15<sup>th</sup>, 2004 will be 571-272-3646. The examiner can normally be reached on M-T and TH-F 6:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 703-305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md

  
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